

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRENT R. CROMLEY**, on March 15, 2005 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Mike Wheat, Chairman (D)
Sen. Jesse Laslovich (D)
Sen. Jim Shockley (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 91, HB 356, HB 488, HB 693
Executive Action: HB 49; HB 191; HB 196; HB 245; HB 262; HB 307

VICE CHAIR CROMLEY opened the hearing on HB 91.

HEARING ON HB 91

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 91**, Prohibit open containers in vehicles.

REP. HARRIS felt that the open container law was timely, necessary, and entirely appropriate. He expressed that it was time to end the message that drinking and driving was an appropriate combination of activities. He recommended that SB 80 be adopted without change and that HB 91 receive the same treatment. He expressed that the difference between the two was that in HB 91 there was a minor Masking Amendment so that the passengers who may be convicted under the open container law would not have those convictions on their driver's licenses, while in SB 80 the penalty would be applied to all passengers including the driver. He suggested that both the bills proceed so that they could go to a free conference committee in order to work out the differences.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.8}

Proponents' Testimony:

Tim Reardon, Representing the Department of Transportation speaking on behalf of Director Lynch, promised to work with a conference committee if it was the outcome of the two bills. He commented that as of March 14, 2005, there had been 39 reported fatalities on Montana highways. Of these, he indicated that 13 were confirmed to involve alcohol and 11 others have a strong suspicion of alcohol involvement. He asserted that it was a serious issue that needed to be addressed. He left a letter from the Director for the Committee members.

EXHIBIT(jus57b01)

{Tape: 1; Side: A; Approx. Time Counter: 2.8 - 5.3}

Paul Grimstad, Colonel of the Montana Highway Patrol, related that the Patrol would support the bill.

{Tape: 1; Side: A; Approx. Time Counter: 5.3 - 5.9}

Denise Harris, Representing 102 Chippewa Members, remarked that the Chippewa believe that until no alcohol related crashes exist

there is still more that could be done. She expressed that an open container law could serve as an important tool against impaired driving. She indicated that studies have shown that open container laws deter both moderate and heavy drinkers from driving under the influence and that states which have this law experience a 5.1% decrease in fatal crashes. As a Montana native, she is proud of the privileges and rights which she holds. However, she was not proud of the fact that Montana has one of the highest percentages of alcohol-related crashes in the nation. She strongly urged the support of HB 91.

{Tape: 1; Side: A; Approx. Time Counter: 5.9 - 7}

Brenda Nordland, Representing the Attorney General, thought that this bill was about where and when individuals drink, and also about the privilege of driving and drinking. She attested that the bill would establish boundaries between alcohol and cars. She indicated that the bill was federally compliant but also addresses policy outside of the federal demand.

{Tape: 1; Side: A; Approx. Time Counter: 7 - 8.1}

Bill Slaughter, Representing the Department of Corrections, thought that the current law was a mixed message.

{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 9}

Harris Himes, Representing Montana Family Coalition, spoke in support of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 9 - 9.2}

Dallas Erickson, Representing Montana Family Coalition, provided written testimony to the Committee. He related that he had worked in a state where they had an open container law and could attest that these bills save lives.

EXHIBIT(jus57b02)

{Tape: 1; Side: A; Approx. Time Counter: 9.1 - 9.9}

Bill Muhs, Public Policy Liaison for Mothers Against Drunk Driving in the Gallatin County, handed out a written version of his testimony. He indicated that they supported both HB 80 and SB 91. He expressed that Montanans want this bill because drinking and driving is a serious offense. He asserted that this bill had nothing to do with individual freedom but about the right of the public to have safer highways. He felt that safety should take precedence because driving is a privilege and not a

right. He asked the Committee to pass the bill forward in its present form and move Montana forward in its effort to save lives.

EXHIBIT(jus57b03)

{Tape: 1; Side: A; Approx. Time Counter: 9.9 - 12.7}

Mona Jamison, Representing Montana's Society of Orthopedic Physicians and Boyd Andrew Communities Service, stood in strong support of the bill. She commented that the traditional Constitutional duties and obligations that the state has are to protect the public health, safety, and welfare. She asserted that this bill would satisfy all three obligations. She thought that this bill epitomizes what the obligation of the state is to its citizens.

{Tape: 1; Side: A; Approx. Time Counter: 12.7 - 14.3}

Greg Van Horsen, Representing State Farm Insurance Company and speaking on behalf of Jacqueline Lenmark of the American Insurance Association, felt that the bill would make the highways safer and would save lives. They supported the bill exactly as it was.

{Tape: 1; Side: A; Approx. Time Counter: 14.3 - 14.8}

Frank Cote, Representing Farmers Union Mutual Insurance Company, expressed strong support of the bill as it was written.

{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 15.2}

Don Hargrove, Representing Montana Addiction Services Providers, thought that the bill was strongly significant. He expressed support for the bill. Assuming that it would go to conference committee he commented that they need to remember that individuals need to bear and accept responsibility for breaking the law.

{Tape: 1; Side: A; Approx. Time Counter: 15.2 - 15.8}

Steve Yeakel, Representing Montana Council for Maternal and Child Health, spoke in support of the bill. He said that the sooner children are taught good habits, the less cost it would have on families.

{Tape: 1; Side: A; Approx. Time Counter: 15.8 - 16.2}

Kris Minard stood in support of HB 91 without amendments. She wanted to get serious about the issue and pass a good law. She urged the Committee to pass the bill without any amendments.

{Tape: 1; Side: A; Approx. Time Counter: 16.2 - 17.3}

Jim Smith, Representing Montana Sheriffs and Peace Officers and the Montana County Attorneys' Association, echoed the opening comments of the sponsor. He asked the Committee to look favorably on HB 80.

{Tape: 1; Side: A; Approx. Time Counter: 17.3 - 18.2}

Jim Kembel, Representing the Montana Association of Chiefs of Police, urged support of the legislation.

{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 18.5}

Spook Stang, Executive Vice President of the Montana Motor Carriers Association, stated that anything that could be done to improve driver distraction would help improve the safety of the highways.

{Tape: 1; Side: A; Approx. Time Counter: 18.5 - 19.1}

Opponents' Testimony:

John Iverson commented that there were a lot of people who made good decisions, where the drivers would not drink but the passengers do. He wanted to know why it should be illegal if there is no risk or trouble. He saw the bill as punishing the driver, who might be responsible, the worst. He expressed that driving under the influence enforcement was the way to change irresponsible activities. He suggested that instead of taking away people's options they should try to find more options for people to make good choices.

{Tape: 1; Side: A; Approx. Time Counter: 19.1 - 22}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. DANIEL MCGEE, SD 29, LAUREL, asked about enforcement. He wanted to know how they were going to enforce the act.

Colonel Grimstad replied that they would enforce it through routine traffic control. He informed the Committee that they

would be stopping traffic violations and if through the investigation after the stop they determine that there is an open container, they would be able to take enforcement action.

SEN. MCGEE followed up asking how they would enforce the act as a primary offense if there was an open container seen through routine traffic control.

Colonel Grimstad stated that if they did not have probable cause they would not be able to make a stop on a vehicle.

SEN. MCGEE inquired if there would be a memorandum to the officers regarding what Colonel Grimstad had just testified.

Colonel Grimstad replied that he would not have a problem doing that.

SEN. MCGEE followed up asking if he would dispense it to the other various law enforcement agencies.

Colonel Grimstad responded that they could pass it on but could not do anything other than that.

{Tape: 1; Side: A; Approx. Time Counter: 22 - 24.1}

Closing by Sponsor:

REP. HARRIS thought that it was the time to adopt an open container law. He reiterated that they should take the bill into conference committee in order to make a good bill.

VICE CHAIR CROMLEY closed the hearing on HB 91 and opened the hearing on HB 356.

{Tape: 1; Side: A; Approx. Time Counter: 24.1 - 24.9}

HEARING ON HB 356

Opening Statement by Sponsor:

REP. ART NOONAN (D), HD 73, opened the hearing on **HB 356**, Background information for law enforcement.

REP. NOONAN thought that this was a good government bill. He noted that the local police department had asked him to bring it forth. He noted that there is general agreement on what the bill attempted to do. He wanted to move the bill forward without the

amendment. He indicated that the bill would help local police departments do a better job. He reserved the right to close.

{Tape: 1; Side: A; Approx. Time Counter: 24.9 - 29}

Proponents' Testimony:

Jim Kembel, Representing Montana Association of Chiefs of Police, discussed the need to hire the best people they could for the safety of the public and the safety of the other officers. He indicated that it had been a problem at times to get complete information on applicants. He asked that on Page 2 the amendment be deleted because it might discourage people from providing complete disclosure.

{Tape: 1; Side: A; Approx. Time Counter: 29 - 30.1}

Jim Smith, Representing Montana Sheriffs and Peace Officers Association, supported the bill. He felt that it was important to have information about the character, values, and integrity.

{Tape: 1; Side: A; Approx. Time Counter: 30.1 - 30.8}

Pam Bucy, Assistant Attorney General, informed the Committee that the bill came directly from Nevada. She noted that the bill had been working well for Nevada especially in governmental entities. She requested the Committee to remove the amendment that was added on Lines 2-3, Page 2. She asserted that they were asking for people to give more information than the general employment file.

{Tape: 1; Side: A; Approx. Time Counter: 30.8 - 32.1}

At this time, **SEN. PEASE** left the hearing.

Bob Worthington, Representing the Montana Municipal Insurance Authority, noted that the bill went a long way to solve problems that have been an issue for the police departments in Montana for a long time. He also supported removal of the language that was added in the House on Lines 2-3, Page 2.

{Tape: 1; Side: A; Approx. Time Counter: 32.1 - 32.7}

At 8:33 A.M. **SEN. MOSS** left the hearing.

Jed Fitch, Representing the Montana Trial Lawyers Association, asserted that there were special circumstances attached to the bill. He noted that police officers are given a special and extraordinary amount of power and control over the daily lives of

citizens and it is important that the right people have that power. He discussed the amendment on Line 2-3. He felt that this amendment would reduce litigation. However, he expressed that it would be ok to strike the language because if it was necessary they would be able to get the information eventually. He proceeded to discuss the amendment in Section 5, the immunity section. He felt that immunity should be given so that the police department received full disclosure. He thought that the amendment went too far and could be rewritten. He asked the Committee to pass the bill as written.

{Tape: 1; Side: A; Approx. Time Counter: 32.7 - 37.1}

SEN. SHOCKLEY arrived at the hearing at 8:36 A.M.

Opponents' Testimony:

Kimberly Kradolfer, an Attorney for the Department of Public Health and Human Services Representing herself, was interested in the bill because of her work with a state agency that had peace officers in the human resources area and also based upon the fact that her family members were in private business. She believed that this bill would be detrimental to employers both in the public and private sector. She thought that it was a bad bill because it was a bill that Montana does not need. She indicated that with a release a public or private employer could obtain any of the information set forth in the bill. She also felt that the bill was bad because it did not include other public employees, employers, and private employers. She believed that it was important to get full information for employees who have great public trust. However, she felt that peace officers were not the only public employees who had a great public trust. The third thing about the bill she disliked was that even if the bill was expanded to include other public employee positions and private employers it would still not be sufficient in the fact that the information that can be obtained by the prior employer is limited. She noted that they need to be able to ask specific questions that would show the aptitude for a particular position. She felt that the amendments were very detrimental. She requested that the Committee reject the bill and move to table it.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.8}

SEN. LASLOVICH arrived at 8:42 A.M.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JEFF MANGAN, SD 12, GREAT FALLS, he indicated that he had voted against similar bills in past sessions partly because he is a private employer and there is a lot of liability connected to this bill. He cited Page 1, Lines 19-20 as an example. These lines requested a general statement concerning the applicants performance evaluations and disciplinary action and a general statement concerning an applicant's absences and attendance. He stated that there was no way to control how those general statements are interpreted by the person receiving the information. He was concerned about the general language and not asking for something specific. He asked Ms. Bucy to comment on why they wanted the general statement and how she perceived it to work.

Ms. Bucy replied that the bill came directly from Nevada although they had changed some of the language. She asserted that every other bill she had looked at contained the general statement language. She thought that the important provision was providing the private employer immunity. She expressed that they wanted some general statements and as much information as they could get.

SEN. MANGAN inferred that they were not looking for the specific information employers keep in their personnel file but personal antidotes about what the people really felt about the employee felt while they were with them.

Ms. Bucy affirmed this inference.

SEN. MANGAN was worried about that even with the immunity provision because of its constitutionality. He then referred to the bottom of Page 1, the acknowledgment to the consent to the release of information. He wanted to know if this meant that the applicant would know that the employer would be asking for personal antidotes regarding the applicant that may not be in the personnel file.

Ms. Bucy believed that the release would notify the applicant that the potential employer would be asking for information about the applicant from their former employer.

{Tape: 1; Side: B; Approx. Time Counter: 6.8 - 12.7}

SEN. MANGAN followed up by asking about the potential liability of a general statement.

Ms. Bucy thought that this bill would help a previous employer explain to a future employer their feelings on an employee. She did not think that this bill would change the status of the law in Montana. She indicated that Nevada felt that this bill provided incentive for former employers to talk openly about an employee. She stressed that it is necessary to get to a potential police officers character. She informed the Committee that there have not been any lawsuits in Nevada as of now. She asserted that it would give private employers more incentive to provide the more subjective information.

{Tape: 1; Side: B; Approx. Time Counter: 12.7 - 16.1}

SEN. GARY PERRY, SD 35, MANHATTAN, asked if the bill was permissive.

Ms. Bucy replied that it was.

SEN. PERRY followed up stating that no employer would be required to follow this bill.

Ms. Bucy affirmed his statement.

SEN. PERRY inquired why the bill was needed if that was true.

Ms. Bucy restated that what they were trying to do was provide employers incentive, immunity, and guidance over what they should turn over for law enforcement officers. She thought that it was a policy question, whether this should be expanded to other positions. She stressed that they were concerned with law enforcement.

SEN. PERRY stated that Title 39, Chapter 2, would be codified. He read 39-2-801. He was disturbed by the sentence "except as provided in Subsection 3, if the person refuses to do so within a reasonable time after the demand, it is unlawful for the person to furnish any statement of the reasons for discharge to any person..." He pointed out Lines 24 and 26 which also concerned him. He discussed terminations that changed to resignations.

{Tape: 1; Side: B; Approx. Time Counter: 16.1 - 19.9}

Ms. Bucy disagreed. She thought that it was relevant that the employer could have the opportunity to tell the potential employer that they would have fired that applicant if they had not resigned. The reason she gave for the lack of lawsuits in the past, over what has been turned over, is that nothing has been turned over because of the statute **SEN. PERRY** had just read. She noted that the bill would not supercede a court order.

SEN. PERRY inquired if she had any information as to how many employers had been threatened with a lawsuit and settled before the lawsuit was filed.

Ms. Bucy replied that she did not.

{Tape: 1; Side: B; Approx. Time Counter: 19.9 - 21.7}

VICE CHAIR CROMLEY asked how the employee would find out if false information was conveyed by the former employer to the new employer if the amendment was removed.

Ms. Bucy responded that they would have to find out from another source if they were not allowed to look at the file.

Closing by Sponsor:

REP. NOONAN focused on the point that the questions brought up were about how generally the public might handle these circumstances and what other types of people might be included. He asserted that the police agencies were asking for a small incentive to be able to exchange critical types of information on people the public trusts to protect them. He stated that it was the narrow specific nature of the bill that would allow it to go forward. He felt that as it was expanded out and applied to society in general there would be specific problems because, with the possible exceptions of other law enforcement agencies, there would not be a place where the employer so clearly does not want to make mistakes. He submitted that taking this small step forward would be a way to solve some of the problems being presented.

{Tape: 1; Side: B; Approx. Time Counter: 21.7 - 25.7}

VICE CHAIR CROMLEY closed the hearing on HB 356 and opened the hearing on HB 488.

HEARING ON HB 488

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 488**, Revise penalty for political civil libel.

REP. GALLIK indicated that the bill was straight-forward. He informed the Committee that it would increase the fine for false voting record statements.

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. PERRY asserted that the fiscal note stated that "the Commissioner's Office has had no complaints alleging the violation of the existing political libel statutes that resulted in a civil action being filed". He also cited Line 22 of the bill. He assumed that the violations were not running rampant therefore he did not see the need to increase a fine for something that appears not to be a problem.

REP. GALLIK replied that as far as the fiscal note was concerned it said "no complaints alleging a violation of the existing political libel statutes that resulted in a civil action being filed". He stated that there had been civil actions, just none that were filed. He expressed that they needed to increase the penalty so that if there are violations they could stop them. He wanted to increase the standards of campaigns.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 4}

Closing by Sponsor:

REP. GALLIK stated that he wanted to ensure that the debates during the campaigns are honest and straightforward. He noted that it had been many years since the fine had been increased.

VICE CHAIR CROMLEY closed the hearing on HB 488 and opened the hearing on HB 693.

{Tape: 2; Side: A; Approx. Time Counter: 4 - 4.9}

SEN. PEASE returned to the hearing at this time.

HEARING ON HB 693

Opening Statement by Sponsor:

REP. JACK WELLS (R), HD 69, opened the hearing on **HB 693**, Citizen self-defense and firearms rights.

REP. WELLS commented that the bill was a bill on the right to self defense and the right to bear arms. He noted that the bill

was an attempt to modify the current law that enables people to defend themselves with the use of concealed firearms. He informed the Committee that they wanted to add a few additions to an individual's rights. He pointed out Section 1 of the bill, which recognized an individual's right to defend themselves. He mentioned in new Section 2 it indicated that an individual had no duty to summon help when they are in a dangerous situation. He explained that they wanted to recognize this because law enforcement people are not in the position to guarantee an individual's safety and protection. He asserted that law enforcement was more in the mode to react to a situation and could not always respond immediately when an individual is in danger. He continued to discuss the bill, informing the Committee that Section 3 addressed the defensive display of a firearm. He explained that they put it in to show that an individual can do certain things to protect himself or herself with a weapon and certain things that they cannot do. He proceeded to discuss Section 4 which dealt with the protection of evidence in an incident where an individual used their weapon. He talked about Section 5, which would keep a firearm from being destroyed by the police department. He indicated that there was one more section in the bill that was amended by the House, which stated that an employer could not keep an individual from having a gun at the workplace in their vehicle. The final section dealt with the ability of a private citizen to make an arrest. He mentioned that there was one amendment that would reinstate a section of the law which was taken out by the House.

SEN. MANGAN left the hearing at this time.

{Tape: 2; Side: A; Approx. Time Counter: 4.9 - 21.1}

Proponents' Testimony:

Harris Himes, Representing the Montana Family Coalition, expressed that this was a family-friendly bill because there are those among us who are more aggressive than others and for them it would be a family-friendly bill.

{Tape: 2; Side: A; Approx. Time Counter: 21.1 - 21.4}

Gary Marbut, President of the Montana Shooting Sports Association, introduced himself including all of his certifications and experience with weapons. He informed the Committee that he had put together a task force to look at the bill and its components. He asserted that the bill was not a consensus work product from the group but was widely distributed. He indicated that one of the general purposes of the bill was to deal with over-zealous prosecutions. He provided an example from

the last year. He went through the sections of the bill. He claimed that they had lost parts of the bill which they thought were important when the House went over the bill. He reiterated some of **REP. WELLS'** sentiments on Section 2 of the bill. He commented on Section 3, Subsections 2 and 3. He presented a few examples which pertained to each of the sections he went through. He commented on the amendment discussed by **REP. WELLS** giving his support for it.

REP. MANGAN returned.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.2}

Doug Nulle, Resident of Clancy and Retired Attorney, rose in strong support of the bill. He also supported the concealed carry amendment which had been discussed by the previous proponents. He felt that the bill provided clarity and broader notice to the public on the issue. He requested a do pass recommendation.

{Tape: 2; Side: B; Approx. Time Counter: 4.2 - 5.6}

Mike Fellows, Chairman of the Montana Libertarian Party, rose in support of the bill and the amendment. He believed that people had the right to own and bear arms.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 6.7}

SEN. AUBYN CURTISS, SD 1, FORTINE, attested that the people in her district take their Second Amendment rights seriously. She spoke of the attempted assassination of President Reagan and the subsequent tightening of gun laws. She felt that the citizenry that are unarmed are particularly vulnerable to well-armed criminals. She urged strong support of the bill and suggested taking a look at the sections of the bill which the House amended.

{Tape: 2; Side: B; Approx. Time Counter: 6.7 - 8.8}

Opponents' Testimony:

Jim Nys, Self Employed Human Resource Consultant Representing the Professional Personnel Officers of the Society for Human Resource Management, was concerned with the increase of violence in the workplace. He shared a story about an employee who was suspended for bringing a gun to work. He indicated that Sections 3 and 6 were the sections of the bill he was most concerned with. He was concerned with the fact that Section 6 would prohibit an employer from keeping firearms away from the workplace in every case. He

wanted clarified that even if some of the actions in Section 3 might not be unlawful the section would not keep employers from writing and carrying out policies that might restrict people from threatening coworkers with a gun that is "just outside". He also thought that there was a private property rights issue. He felt that an employer should be able to say if a person could bring weapons onto their property or not. He indicated that there would be an insurance increase for employers, not to mention the liability of a potential issue with a gun, in the workplace. He relayed a comment from one of his members; "If there is a perceived concern about safety in the workplace maybe the bill would be better stated to allow nonlethal means for people to protect themselves."

{Tape: 2; Side: B; Approx. Time Counter: 8.8 - 13.7}

Jim Kembel, Representing the Montana Association of Chiefs of Police and the Montana Police Protective Association, addressed Section 5 of the bill. He attested that they were concerned about the safety and liability of putting guns back on the street. They were also concerned with weapons sold by the law enforcement agency being used in the commission of a crime. There were also a number of concerns they had on the side of local control. He noted that there were agencies which gave the state lab different models of weapons, there were weapons that they donate to hunter safety classes, as well as suitable weapons for small law enforcement agencies that cannot afford them on their own. He felt that those communities which choose to sell weapons have the right to do so but those communities who don't have the right not to. He saw that in a court situation, if a judge orders a weapon to be destroyed, the bill could be in conflict with the ruling of the judge. He also expressed concern with the reinstitution of the concealed weapons portion of the legislation and asked that it not be allowed.

{Tape: 2; Side: B; Approx. Time Counter: 13.7 - 16.2}

Jim Smith, Representing Montana Sheriffs and Peace Officers and the Montana County Attorney's Association, opposed the bill. He asserted that he has had experience with these issues. He stated that law enforcement members were not anti-gun for the most part. However, both organizations felt that the bill was not necessary and would cloud up existing law to the detriment of public safety. He expressed that they had worked on these issues over the years and had ended up with a compromise in terms of concealed weapons and whether or not the permit system should be left in place and whether or not there should be places where concealed weapons should not be allowed. He thought that the compromise had worked well and was surprised at the amendment.

He thought that they were dealing with understandable tension between public safety and private safety. He restated that the concern for the organizations he represented was for public safety. He conceded that the law enforcement did not take responsibility for the private personal safety for every individual in Montana at all times. However, the right to self defense are provided in existing law and have stood the test of time over the years. He concluded by saying the bill would give the people he represented concern in the area of public safety.

{Tape: 2; Side: B; Approx. Time Counter: 16.2 - 21}

Pam Bucy, Assistant Attorney General Representing the Attorney General's Office, felt that the bill was a solution looking for a problem. She stated that the law of self defense was well settled in Montana in statutory law and Constitutional law both State and Federal. She expressed that the bill did nothing to clarify the law of self defense but provided further fodder for litigation in that duty. She addressed Section 3 of the bill. She reiterated that self defense was not a problem in Montana. She asserted that this bill would not help it would just complicate things. She responded to **SEN. CURTISS'** comments about the statistics of sexual assault and rape going down when there are weapons involved. She indicated that women who own weapons, more often than not, have their weapons used against them. She also addressed firearms in the workplace. She addressed Section 5 of the bill last. She noted that there was no distinction between guns collected during forfeiture or gathered as evidence. She claimed that under this bill law enforcement would be required to sell all the guns. She saw this section putting law enforcement in direct competition with gun dealers. She asserted that no evidence is destroyed in Montana until it has been looked at and the rightful owner has been determined or not. She urged the Committee to table the bill.

{Tape: 2; Side: B; Approx. Time Counter: 21 - 26.4}

Barbara Ranf, Representing the Montana Chamber of Commerce, opposed the bill because of Section 6. She attested that it would give the employer no flexibility depending on the nature of the business and it would tie their hands in their ability to protect their workforce. She talked about workplace violence issues. She commented that an employer has the obligation to provide a safe work environment which includes putting into place policies stating what they would and would not tolerate. She requested that the Committee remove Section 6 from the bill.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.6}

Bob Worthington, Representing the Montana Municipal Insurance Authority, rose with two concerns about the bill. He mentioned that their program provided liability for the majority of city law enforcement and workers compensation for them as well. He called to attention the difficulty the law enforcement has in doing their job across the state and the additional problems that the bill would create. He requested that the Committee remove Section 5 at the very least.

{Tape: 3; Side: A; Approx. Time Counter: 1.6 - 3.3}

SEN. MOSS returned.

Kris Manard opposed the bill because of the concealed weapons changes. She felt that there was a difference between the right to bear arms and the privilege to conceal them. She mentioned that she was a concealed weapons holder and felt that it would be best for the state to know who has concealed weapons.

{Tape: 3; Side: A; Approx. Time Counter: 3.3 - 4.1}

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. MCGEE asked Mr. Smith if he was the mayor of Helena.

Mr. Smith affirmed that he was.

SEN. MCGEE inquired if it was legal to walk through Helena with a weapon that was not concealed.

Mr. Smith replied that it would be.

SEN. MCGEE asked if it was legal to have a weapon under a coat because it was raining.

Mr. Smith responded that it would be if he had a concealed weapons permit but would not be if he was concealing it without a permit.

SEN. MCGEE presented a scenario where an individual was walking down the street before it rained with a .357 Magnum on his hip. He asserted that he would be fine to do in Helena until it rained and he put an overcoat on. He wanted to know how much more of a threat there was because he put on a raincoat.

Mr. Smith answered that there would be the same threat one way or the other. He attested that he did not understand the differentiation either.

SEN. MCGEE wondered if the Sheriffs and Peace Officers were concerned with the concealed weapons provision of the act.

Mr. Smith replied that they were concerned with the amendment that would make the permit system optional.

SEN. MCGEE followed up asking if an officer would know if an individual had a concealed weapon or a concealed weapon permit.

Mr. Smith conceded that they probable would not know.

SEN. MCGEE restated his question, inserting that the individual was a methamphetamine addict.

Mr. Smith again attested that the officer would probably not know.

SEN. MCGEE insisted that one of them would be legal and the other wouldn't be. His question was, "who would be more dangerous, the one with the concealed weapons permit or the methamphetamine dealer with no permit or the person who did not have a permit and concealed their weapon under a raincoat?" He asked Mr. Smith to make a differentiation for the Committee so that they could make a decision regarding the bill.

Mr. Smith expressed that it would be difficult if the essential question was how much more or less dangerous is one person versus another by virtue of having a permit or not. However, if the dealer was convicted of dealing then he would not get a permit in the first place.

{Tape: 3; Side: A; Approx. Time Counter: 4.1 - 9.2}

SEN. CURTISS requested that Mr. Marbut refresh her memory about the statistics he had cited about Florida's rape and sexual assault cases.

Mr. Marburt related that there was a series of brutal rapes in the Orlando Florida area which prompted women to buy guns. The editor of the local paper went to the chief of police telling him that it was dangerous. The chief of police provided safety training in the use of firearms. He mentioned that the incidence of rape in Orlando dropped to zero because of the publicity. There was a followup study done two years later which indicated that there were no shootings and the rapes were down.

{Tape: 3; Side: A; Approx. Time Counter: 9.2 - 11.6}

SEN. CURTISS asked Ms. Bucy to provide statistics relative to any crimes that have been committed by persons carrying concealed weapons permits.

Ms. Bucy was not aware of those statistics.

SEN. CURTISS wondered if Mr. Marbut had any statistics relative to crimes committed by persons with concealed permits.

Mr. Marbut responded that he had no information on the matter except for the licenses which have been revoked by law enforcement. He asserted that there have been crimes committed in Montana since 1991 when they adopted the law concerning concealed weapons permits. He mentioned that when an individual gets a concealed weapons permit they have to have a background check, submit mugshots and fingerprints, and go through training.

{Tape: 3; Side: A; Approx. Time Counter: 11.6 - 13.3}

SEN. JESSE LASLOVICH, SD 43, ANACONDA, cited Line 19, Page 1. He asked if there were data available that would suggest using firearms for self defense discouraged violent crime.

Mr. Marbut affirmed that there was. He mentioned a book called *More Guns Less Crime* which claimed that there was a reduction in interpersonal violent crime because of the concealed weapons laws.

SEN. LASLOVICH referred to Line 21, Page 1. He was concerned with the term "assault". He asserted that a person would not have the right to shoot a person because of assault. He suggested they strike "wrongful assault" and use "force likely to cause death or serious bodily harm".

Mr. Marbut responded that if an individual was threatened and felt that death or serious bodily harm was imminent they would have the right to authorize lethal force to end the threat. He admitted that he was not wedded to the term "wrongful assault". He was in favor of leaving the language generic but would be fine with tightening the language up.

{Tape: 3; Side: A; Approx. Time Counter: 13.3 - 18.3}

SEN. LASLOVICH noted that Mr. Marbut had commented that there was case law with regard to having the duty to call the police. He wondered if it was a Montana case law or case law in general.

Mr. Marbut was not aware of anything in Montana case law that addressed that issue, although there were things in other case laws.

SEN. LASLOVICH followed up asking about new Section 3, Subsection 2, Line 29, and the words "includes but is not limited to" and Page 2, Line 5, the language "does not include". He wondered why they didn't use the same language from Subsection 3.

Mr. Marbut explained that the "includes but is not limited to" was placed in the bill by Mr. McMaster from Legislative Services Division.

SEN. LASLOVICH wondered if he would want to keep the language the same.

Mr. Marbut attested that the reason he liked the language was because he did not want to develop the list that would be needed to articulate everything that would be acceptable behavior.

{Tape: 3; Side: A; Approx. Time Counter: 18.3 - 22.3}

SEN. LASLOVICH cited Page 2, Line 2. He was concerned with the word "directly". He thought that it might be better to insert "in the direction of another person". He felt that a situation might call for different language.

Mr. Marbut indicated that they were trying to articulate in this section what was taught by police in self defense, the ready positions. He explained the different positions an individual could be in that would be acceptable behavior.

SEN. LASLOVICH asserted that "in the direction of" was similar to "directly" only broader.

Mr. Marbut wanted to see the bill say within 45 degrees of a person. He claimed that the language was the best approximation they could come up with.

SEN. LASLOVICH followed up discussing new Section 4. It seemed to him that when a law enforcement agency came upon a crime they would take in all of the evidence and testimony, investigating the scene to the best of their ability. He wondered if the language was superfluous.

Mr. Marbut agreed that the police generally do a good job and have good intentions. However, they have a mind set - dealing with crime. Therefore, they investigate for evidence of a crime and are not focused on evidence or information that would prove

self defense was used. He knew that there was at least one person in prison in Montana that would have been exonerated if the police had looked for evidence of self defense.

{Tape: 3; Side: A; Approx. Time Counter: 22.3 - 28.2}

SEN. LASLOVICH wondered if there had been an instance where the law enforcement agencies Mr. Kembel represented did not investigate a crime to the fullest.

Mr. Kembel replied that the police officers were trained not to form an opinion when they walked onto a crime scene but to base their opinion on what they observe and find at a scene. He assured the Committee that they were very thorough.

SEN. LASLOVICH redirected his question to Mr. Smith.

Mr. Smith explained the type of training provided by the Law Enforcement Academy, called scenario based training. He thought that law enforcement was trained to proceed into situations cautiously, deliberately, and with an emphasis on protecting the evidence. He stressed that there were many specialists in the crime lab and at the scene trained to deal with the evidence. He concluded that Section 4 was not necessary to the bill.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 3.9}

SEN. LASLOVICH asked about new Section 5. He suggested an amendment that would strike the language in the last sentence and add "a law enforcement agency may not destroy the firearm except..." He wanted to know if this would address the concerns of the Department of Justice.

Ms. Bucy thought that there were situations where that would not work. She indicated that the crime lab could receive upwards of 500 weapons a year. She felt that because many of the weapons were extremely dangerous they needed to not be put in the position to have to sell them. She felt that permissive language, allowing departments to sell them would be fine, but she thought that might already be in existence and would not be necessary. She expressed that she thought it was a bad idea to require any kind of selling.

SEN. LASLOVICH wondered what the protocol was when a law enforcement agency takes a firearm. He wanted to know when they kept it in storage, when they would let it go, or when they would sell it.

Ms. Bucy replied that it depended on how the law enforcement agency got the firearm. She informed the Committee that if they got it as evidence they would not sell it, they would destroy it. However, if they got it as part of a forfeiture proceeding they might sell them. She stated that the majority of law enforcement agencies would send them to the crime lab.

{Tape: 3; Side: B; Approx. Time Counter: 3.9 - 7.3}

SEN. MANGAN was under the impression that in order to sell guns one must have a license. It seemed to him that there were a lot of laws that were associated. He requested that she explain the procedure and wondered if local governments would be exempt from what is required of private citizens.

Ms. Bucy did not think that governments would be exempt, which is why when they saw the provision they were opposed. She did not want to see small government agencies get into the business and comply with the state and federal firearms laws.

SEN. MANGAN deferred the question to Mr. Marbut.

Mr. Marbut replied that federal firearms dealers were licensed by the Bureau of Alcohol, Tobacco, and Firearms. He indicated that when law enforcement agencies offer a collection to bid it is the Federal Firearms Licensed Dealers in the community who bid on them and assume all of the liability.

SEN. MANGAN stated that in Mr. Marbut's scenario the onus would be on a licensed dealer who would be purchasing the guns from the local government and there would be nothing the law enforcement agency would have to do to ensure that.

Mr. Marbut explained that what usually happened was that the law enforcement agency would tell the dealers what they had in stock, require a bid, take the highest bid, and then hand them off to the dealer. The dealer then checks and repairs them and does all of the background checks for sale to individuals. As far as he knew the law enforcement agencies were not doing any sales to individuals.

SEN. MANGAN wondered what would happen if the law enforcement agency decided to go into competition with dealers.

Mr. Marbut did not care who they sold to but thought that it would be easy for them to distribute the guns into the hands of federally licensed dealers. He just didn't want to see the guns destroyed.

{Tape: 3; Side: B; Approx. Time Counter: 7.3 - 12.3}

SEN. PERRY cited Page 4, Section 6, which said "an employer may not prohibit an employee from keeping a firearm in a vehicle owned by an employee and parked at the workplace." He understood that the intent of this section, according to the proponents, was to keep other employees safe by allowing them to have their guns in their vehicles. As an employer, if two employees get into an argument and shoot at each other, he wanted to know what liability he had.

Mr. Nys stated that if someone got injured there would be a workers compensation claim involved because it happened at the work place. He also indicated that there would be a court claim stating that the employer did not do anything appropriate to protect their employees from harm created by that kind of a scenario.

{Tape: 3; Side: B; Approx. Time Counter: 12.3 - 14.6}

SEN. PERRY had a question about the section on Page 4. He related a story about an employee of his who threatened other employees with a firearm in his trunk. He asserted that Title 39, in the labor law section, provided protections of employees and human rights sections that do the same. However, he felt that there were not many laws which protected employers. He asserted that employers were terrified of potential lawsuits from disgruntled or injured employees. He felt that in this case they were trapped between lawsuits for denying employee rights and protecting employees from potential harm from other employees. He asked about his rights as an employer. He wanted to know how he was to protect his employees, his company, his business from lawsuits because of injuries that might be sustained on his property, and how could they say that he can't prohibit an employee from keeping firearms in his trunk.

REP. WELLS agreed that there was a conflict with property rights and gun rights. He recognized that there was a problem between the two with this particular issue. He tried to resolve the dichotomy by imagining different scenarios. In response to the scenario presented by **SEN. PERRY** he responded that the man was obviously not a law-abiding citizen. He thought that there might be laws against what that man was doing. He expressed that the man was the type of individual that, no matter what law is passed, would not follow the laws or respect others. He presented another scenario where a similar individual started shooting people and no one would be able to get their gun for protection because this law was not passed. He believed that in that instance people could sue their employer because they were

not able to protect themselves because they were not allowed to have guns in their cars. He insisted that the issue came down to what the best protection was. He asserted that there were a number of cases which showed that the best overall protection was the mind set, in the offender, that someone might be able to defend themselves. He contended that people were not safer because people who were intent on doing harm would not obey the laws. He felt that by imposing laws on employees and citizens in general they were preventing the law abiding citizen from defending themselves and give free license to the criminal. He expressed that they needed to go with the rights of people to defend themselves over property rights.

{Tape: 3; Side: B; Approx. Time Counter: 14.6 - 23.4}

REP. PERRY remarked that if he was not allowed to develop company policies and company employee manuals that say specifically no alcohol, drugs, or firearms on the premises and the circumstance he reported arose again, he would not be able to fire the individual because he was not violating any rule. He wondered if this bill would not then infringe on his right as an employer to set the standards for the workplaces associated with his company.

REP. WELLS agreed that there would be a certain amount of infringement on his rights. He claimed that in almost every law passed they infringed on someone's rights in one sense or another. He thought that company policy would be such that they could protect the workplace by prohibiting them from having firearms or alcohol on the premises. He thought that the line was being extended too far if they prohibited people from keeping firearms in their vehicles at work.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 0.6}

SEN. O'NEIL wondered if there was any record of a person carrying a concealed weapon outside of a municipality and committing a crime with it.

Ms. Bucy did not know of any. She thought that most people who get concealed weapons permits were law abiding citizens. She promised to check into the issue.

SEN. O'NEIL clarified that he was talking about people who were carrying illegal concealed weapons outside of municipalities.

Ms. Bucy replied that the only information she could get was the revocation on concealed weapons permits.

SEN. O'NEIL asked if it would be fair to say that there has not been any crime committed by concealed weapons outside of municipalities.

Ms. Bucy remarked that it would be fair to say that she did not know of any.

{Tape: 4; Side: A; Approx. Time Counter: 0.6 - 3}

SEN. O'NEIL asked Mr. Marbut the same question.

Mr. Marbut gave the same answer as Ms. Bucy except he said that he has been watching carefully since 1991 to see if he could see evidence of it and he has not seen any evidence. However, he has not queried the sheriff's departments about how many people had been arrested and convicted for carrying a concealed weapon to be used to commit a crime outside city limits.

SEN. O'NEIL wondered if Mr. Marbut had any knowledge of women's weapons being used against them in Montana.

Mr. Marbut though that Ms. Bucy was mistaken about that. He noted that her statement was based on a study done by a gun control outfit nationally which was debunked eventually. His information was that it had never happened to anyone in Montana.

{Tape: 4; Side: A; Approx. Time Counter: 3 - 5.1}

SEN. SHOCKLEY returned.

SEN. O'NEIL commented that as a former employer he appreciated the language on Page 4, Section 11, which was stricken. He wondered if the language wouldn't make it possible for bank robbers when they are robbing the bank.

REP. WELLS replied that it would not make it illegal, but the robbing of the bank would be the illegal act. He asserted that, if an individual was going to rob a bank, they would conceal their weapon.

SEN. O'NEIL followed up citing Line 23, Page 4, which was stricken. He wondered what it would do to the section.

REP. WELLS explained that they had experienced difficulty in drafting the particular language which would allow an individual to carry a concealed weapon but not misuse it. The language meant that it would be legal to carry a concealed weapon as long as it was not used in a crime. He stated that criminal offense was meant to address all sorts of things.

SEN. O'NEIL cited Page 3, Lines 6-8, which was also currently stricken. He asked if it was not present law that if an individual was found not guilty they would get their gun back.

REP. WELLS replied that he did not know what the law said in those instances. He referred the question to Mr. Marbut.

Mr. Marbut answered that the law was currently silent on the topic. He reiterated that the guns went to the crime lab where they would be tested and destroyed. He had heard that some police agencies never return a gun without a court order.

Ms. Bucy agreed with Mr. Marbut. She clarified that she testified that guns, seized as evidence or as forfeiture, were routinely sent to the crime labs. She noted that if someone was acquitted or found not guilty their guns would be returned to them.

{Tape: 4; Side: A; Approx. Time Counter: 5.1 - 10.5}

SEN. O'NEIL asked if there was statute that said the gun would be returned to the owner.

Ms. Bucy responded that there was no statute it was just the procedure. She did not know if the 48 hour requirement was followed.

SEN. CURTISS inquired why the language at the bottom of Page 3 and the top of Page 4 was stricken.

Mr. Marbut could not explain why the House chose to strike the language. He commented that one of the issues related in the discussion was that it brought up a property rights issue. His position was that when an individual rents property from a landlord they buy some of the property rights. He expressed that the renter's rights arise with the contract and also has the right to self defense.

{Tape: 4; Side: A; Approx. Time Counter: 10.5 - 12.7}

Closing by Sponsor:

REP. WELLS related a story from Florida about a group of car jackers who targeted foreigners because they didn't have guns. He felt that if people had arms they would be able to defend themselves and that would cause the criminals to go to other areas or attack other people. He submitted that the insurance companies should charge more for people who are not permitting employees to be in a position to defend themselves. He cited

that Mr. Smith said that the bill clouded up public safety. He thought that public safety was clouded up already and that this bill attempted to make the rules more obvious. He did not think that the arguments against the bill were compelling. He claimed that the facts showed that if people were allowed to defend themselves there is less violence.

VICE CHAIR CROMLEY closed the hearing on HB 693.

REP. WELLS indicated that **SEN. SHOCKLEY** would be carrying the bill on the Senate floor.

{Tape: 4; Side: A; Approx. Time Counter: 12.7 - 18.2}

SEN. SHOCKLEY and **SEN MANGAN** left the hearing.

EXECUTIVE ACTION ON HB 49

Motion: **SEN. MCGEE** moved that HB 49 BE CONCURRED IN.

Discussion: **SEN. MOSS** noted that there might be an amendment from Ms. Bovington.

SEN. O'NEIL thought that it might be about the offender taking himself off the offender's list.

SEN. MCGEE interjected that he had brought up the question regarding the Constitutional provision in Article 2, Section 8. He reminded the Committee that Ms. Bovington had noted that extended supervision was not a criminal-related factor but a civil-related factor and therefore was fine to do. He did not recall a discussion about an amendment on the bill.

{Tape: 4; Side: A; Approx. Time Counter: 18.2 - 22.5}

SEN. LASLOVICH recalled that the amendment was in regard to Section 3. The reason he thought for not having it was that the Department of Justice did not like it. He thought that it would be prudent to hold off on executive action because they had not heard back from the concerned parties with regard to the amendment.

SEN. MCGEE withdrew his motion to concur in HB 49 without objection.

{Tape: 4; Side: A; Approx. Time Counter: 22.5 - 23.4}

EXECUTIVE ACTION ON HB 191

Motion/Vote: SEN. LASLOVICH moved that HB 191 BE CONCURRED IN. Motion carried 9-1 by voice vote with SEN. MCGEE voting no with SEN. WHEAT voting aye by proxy.

SEN. ELLINGSON offered to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 196

Motion: SEN. MCGEE moved that HB 196 BE CONCURRED IN.

Discussion: VICE CHAIR CROMLEY noted that he had discussed the bill with an attorney who knew about the matter and gave his approval of the form.

SEN. O'NEIL thought that this should apply to all powers of attorney, unless specifically excluded. He thought that it was a good bill.

VICE CHAIR CROMLEY remarked that in terms of the duties, all powers of attorney were expected to follow them. He attested that the form would just give the powers of attorney notice of what is required of them.

Vote: Motion carried unanimously by voice vote with SEN. WHEAT voting aye by proxy.

VICE CHAIR CROMLEY volunteered to carry the bill on the Senate floor.

{Tape: 4; Side: A; Approx. Time Counter: 23.4 - 27.3}

EXECUTIVE ACTION ON HB 245

Motion: SEN. MCGEE moved that HB 245 BE CONCURRED IN.

Discussion: SEN. MOSS commented that she had visited with SEN. LEWIS about the bill and it was his opinion that this bill was not necessary because his bill addressed all of the points contained within HB 245.

VICE CHAIR CROMLEY remarked that he would not endorse anything additional in this bill because he also felt that it was all contained within SEN. LEWIS' bill.

SEN. O'NEIL wanted to put coordinating language with the other bill which would say that if this bill passes then **SEN. LEWIS'** bill would be repealed. He felt that this bill would be much better on the treasury because **HB 245** would not require the creation of another board, which **SEN. LEWIS'** bill required.

Substitute Motion/Vote: **SEN. MCGEE** made a substitute motion that **HB 245 BE TABLED**. Substitute motion carried 9-1 by voice vote with **SEN. O'NEIL** voting no and **SEN. WHEAT** voting aye by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 4}

EXECUTIVE ACTION ON HB 262

SEN. SHOCKLEY returned to the Committee he indicated that he would carry the bill on the Senate floor.

Motion/Vote: **SEN. CROMLEY** moved that **HB 262 BE CONCURRED IN**. Motion carried unanimously by voice vote with **SEN. WHEAT** voting aye by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 4 - 5.6}

EXECUTIVE ACTION ON HB 307

Motion: **SEN. MCGEE** moved that **HB 307 BE CONCURRED IN**.

Motion: **SEN. SHOCKLEY** moved that **HB030701.AGP BE CONCURRED IN**.

Discussion: **Valencia Lane** explained the amendment. She noted that it would take out the provisions that were drafted into the bill based on drug forfeiture laws dealing with the sale of confiscated property, and replace it with the provision that the interest of third parties in the property must be settled in accordance with the Rules of Civil Procedure. She cited Pages 4-5, new Section 6, Disposition of Proceeds for a Sale.

SEN. MCGEE asked if the Rules of Civil Procedure ever changed.

VICE CHAIR CROMLEY replied that the Supreme Court could change the rules.

SEN. SHOCKLEY understood the rule to be that if the Supreme Court changed the Rules, the legislature had one session to veto it. He did not see why the police shouldn't have to settle cases in normal litigation like everyone else.

SEN. MCGEE had a problem with the reference in law to the Rules of Civil Procedure because that would elevate the Rules of Civil Procedure to something that is an "over umbrella thing to law". He did not like writing legislation for the people of Montana that can't be understood by the people of Montana. He attested that the Rules of Civil Procedure might make sense to the legislators and to lawyers but not to the average citizen.

SEN. SHOCKLEY responded that the language was in Title 26 already.

Ms. Lane reminded the Committee of the Constitutional separation between the branches of state government. She noted that the Rules of Civil Procedure are published in the Montana Codes Annotated (MCA) but are not part of them, they are adopted by the Supreme Court and as a matter of fundamental law are the rules of the Supreme Court for their use. She did not think that it was raising them to the level, she thought that they shared the same level as the laws enacted by the legislature.

{Tape: 4; Side: B; Approx. Time Counter: 5.6 - 12.5}

SEN. SHOCKLEY was not adamant about Civil Procedure. He was willing to add language that would be more generic.

SEN. MCGEE asked if there was reference throughout the MCA to the Rules of Civil Procedure.

Ms. Lane was confident that there were several references throughout the Code to the Rules of Civil Procedure.

SEN. PERRY commented on the Rules of Civil Procedure. He mentioned that several of the bills have dealt with agency procedure. He expressed that these have been modeled by the Rules of Civil Procedure in Title 25.

{Tape: 4; Side: B; Approx. Time Counter: 12.5 - 14.6}

Vote: Motion carried unanimously by voice vote with **SEN. WHEAT** voting aye by proxy.

Motion: **SEN. MCGEE** moved that HB 307 BE CONCURRED IN AS AMENDED.

Discussion: **SEN. CURTISS** wanted assurance that the individual who is innocent would have adequate opportunity to prove their innocence. She thought that the 20-day provision seemed expeditious.

SEN. ELLINGSON spoke against the bill, even though he was a cosponsor. He asserted that Section 1 was clear to him. However, he was confused by the rest of the bill. He did not know why the other sections referenced Section 1.

SEN. SHOCKLEY withdrew his motion. He expressed that the problems mentioned by **SEN. ELLINGSON** were the problems he had hoped to solve. He felt that the amendment was not exactly what he wanted, he had hoped to take out the language noted by **SEN. ELLINGSON**.

Ms. Lane requested that they reconsider the adoption of the amendments.

Motion/Vote: **SEN. MCGEE** moved to RECONSIDER THE MOTION on HB 307. Motion carried unanimously by voice vote with **SEN. WHEAT** voting by proxy.

Motion/Vote: **SEN. MCGEE** moved TO STRIKE AMENDMENTS ON HB 307. Motion carried unanimously by voice vote with **SEN. WHEAT** voting aye by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 14.6 - 19}

SEN. ELLINGSON asked **Ms. Lane** to address his question.

Ms. Lane clarified that he had been worried about the fact the Section 1 references other sections about forfeiture which reference back to Section 1.

Additional documents provided on this day were a letter regarding HB 91 from Mike Fellows and an article from the Missoulian regarding the Open Container Law.

EXHIBIT(jus57b04)

EXHIBIT(jus57b05)

ADJOURNMENT

Adjournment: 11:48 A.M.

SEN. BRENT CROMLEY, Vice Chairman

MARI PREWETT, Secretary

BRITT NELSON, Transcriber

MW/mp/bn

Additional Exhibits:

EXHIBIT ([jus57bad0.PDF](#))